

EXHIBIT 10

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL) MDL No. 2804
5 PRESCRIPTION OPIATE)
6 LITIGATION) Case No.
7) 1:17-MD-2804
8)
9 THIS DOCUMENT RELATES TO) Hon. Dan A.
10 ALL CASES) Polster
11)

12
13
14
15
16 Tuesday, May 14, 2019
17
18
19
20
21
22
23

24 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
25 CONFIDENTIALITY REVIEW

26 Videotaped Deposition of JAMES E.
27 RAFALSKI, VOLUME 2, held at Weitz &
28 Luxenburg PC, 3011 West Grand Avenue, Suite
29 2150, Detroit, Michigan, commencing at
30 8:25 a.m., on the above date, before
31 Michael E. Miller, Fellow of the Academy of
32 Professional Reporters, Registered Diplomate
33 Reporter, Certified Realtime Reporter and
34 Notary Public.

35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1030
1031
1032
1033
1034
1035
1036
1037
1038
1039
1040
1041
1042
1043
1044
1045
1046
1047
1048
1049
1050
1051
1052
1053
1054
1055
1056
1057
1058
1059
1060
1061
1062
1063
1064
1065
1066
1067
1068
1069
1070
1071
1072
1073
1074
1075
1076
1077
1078
1079
1080
1081
1082
1083
1084
1085
1086
1087
1088
1089
1090
1091
1092
1093
1094
1095
1096
1097
1098
1099
1100
1101
1102
1103
1104
1105
1106
1107
1108
1109
1110
1111
1112
1113
1114
1115
1116
1117
1118
1119
1120
1121
1122
1123
1124
1125
1126
1127
1128
1129
1130
1131
1132
1133
1134
1135
1136
1137
1138
1139
1140
1141
1142
1143
1144
1145
1146
1147
1148
1149
1150
1151
1152
1153
1154
1155
1156
1157
1158
1159
1160
1161
1162
1163
1164
1165
1166
1167
1168
1169
1170
1171
1172
1173
1174
1175
1176
1177
1178
1179
1180
1181
1182
1183
1184
1185
1186
1187
1188
1189
1190
1191
1192
1193
1194
1195
1196
1197
1198
1199
1200
1201
1202
1203
1204
1205
1206
1207
1208
1209
1210
1211
1212
1213
1214
1215
1216
1217
1218
1219
1220
1221
1222
1223
1224
1225
1226
1227
1228
1229
1230
1231
1232
1233
1234
1235
1236
1237
1238
1239
1240
1241
1242
1243
1244
1245
1246
1247
1248
1249
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1260
1261
1262
1263
1264
1265
1266
1267
1268
1269
1270
1271
1272
1273
1274
1275
1276
1277
1278
1279
1280
1281
1282
1283
1284
1285
1286
1287
1288
1289
1290
1291
1292
1293
1294
1295
1296
1297
1298
1299
1300
1301
1302
1303
1304
1305
1306
1307
1308
1309
1310
1311
1312
1313
1314
1315
1316
1317
1318
1319
1320
1321
1322
1323
1324
1325
1326
1327
1328
1329
1330
1331
1332
1333
1334
1335
1336
1337
1338
1339
1340
1341
1342
1343
1344
1345
1346
1347
1348
1349
1350
1351
1352
1353
1354
1355
1356
1357
1358
1359
1360
1361
1362
1363
1364
1365
1366
1367
1368
1369
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379
1380
1381
1382
1383
1384
1385
1386
1387
1388
1389
1390
1391
1392
1393
1394
1395
1396
1397
1398
1399
1400
1401
1402
1403
1404
1405
1406
1407
1408
1409
1410
1411
1412
1413
1414
1415
1416
1417
1418
1419
1420
1421
1422
1423
1424
1425
1426
1427
1428
1429
1430
1431
1432
1433
1434
1435
1436
1437
1438
1439
1440
1441
1442
1443
1444
1445
1446
1447
1448
1449
1450
1451
1452
1453
1454
1455
1456
1457
1458
1459
1460
1461
1462
1463
1464
1465
1466
1467
1468
1469
1470
1471
1472
1473
1474
1475
1476
1477
1478
1479
1480
1481
1482
1483
1484
1485
1486
1487
1488
1489
1490
1491
1492
1493
1494
1495
1496
1497
1498
1499
1500
1501
1502
1503
1504
1505
1506
1507
1508
1509
1510
1511
1512
1513
1514
1515
1516
1517
1518
1519
1520
1521
1522
1523
1524
1525
1526
1527
1528
1529
1530
1531
1532
1533
1534
1535
1536
1537
1538
1539
1540
1541
1542
1543
1544
1545
1546
1547
1548
1549
1550
1551
1552
1553
1554
1555
1556
1557
1558
1559
1560
1561
1562
1563
1564
1565
1566
1567
1568
1569
1570
1571
1572
1573
1574
1575
1576
1577
1578
1579
1580
1581
1582
1583
1584
1585
1586
1587
1588
1589
1590
1591
1592
1593
1594
1595
1596
1597
1598
1599
1600
1601
1602
1603
1604
1605
1606
1607
1608
1609
1610
1611
1612
1613
1614
1615
1616
1617
1618
1619
1620
1621
1622
1623
1624
1625
1626
1627
1628
1629
1630
1631
1632
1633
1634
1635
1636
1637
1638
1639
1640
1641
1642
1643
1644
1645
1646
1647
1648
1649
1650
1651
1652
1653
1654
1655
1656
1657
1658
1659
1660
1661
1662
1663
1664
1665
1666
1667
1668
1669
1670
1671
1672
1673
1674
1675
1676
1677
1678
1679
1680
1681
1682
1683
1684
1685
1686
1687
1688
1689
1690
1691
1692
1693
1694
1695
1696
1697
1698
1699
1700
1701
1702
1703
1704
1705
1706
1707
1708
1709
1710
1711
1712
1713
1714
1715
1716
1717
1718
1719
1720
1721
1722
1723
1724
1725
1726
1727
1728
1729
1730
1731
1732
1733
1734
1735
1736
1737
1738
1739
1740
1741
1742
1743
1744
1745
1746
1747
1748
1749
1750
1751
1752
1753
1754
1755
1756
1757
1758
1759
1760
1761
1762
1763
1764
1765
1766
1767
1768
1769
1770
1771
1772
1773
1774
1775
1776
1777
1778
1779
1780
1781
1782
1783
1784
1785
1786
1787
1788
1789
1790
1791
1792
1793
1794
1795
1796
1797
1798
1799
1800
1801
1802
1803
1804
1805
1806
1807
1808
1809
1810
1811
1812
1813
1814
1815
1816
1817
1818
1819
1820
1821
1822
1823
1824
1825
1826
1827
1828
1829
1830
1831
1832
1833
1834
1835
1836
1837
1838
1839
1840
1841
1842
1843
1844
1845
1846
1847
1848
1849
1850
1851
1852
1853
1854
1855
1856
1857
1858
1859
1860
1861
1862
1863
1864
1865
1866
1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
1904
1905
1906
1907
1908
1909
1910
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935
1936
1937
1938
1939
1940
1941
1942
1943
1944
1945
1946
1947
1948
1949
1950
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960
1961
1962
1963
1964
1965
1966
1967
1968
1969
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
2025
2026
2027
2028
2029
2030
2031
2032
2033
2034
2035
2036
2037
2038
2039
2040
2041
2042
2043
2044
2045
2046
2047
2048
2049
2050
2051
2052
2053
2054
2055
2056
2057
2058
2059
2060
2061
2062
2063
2064
2065
2066
2067
2068
2069
2070
2071
2072
2073
2074
2075
2076
2077
2078
2079
2080
2081
2082
2083
2084
2085
2086
2087
2088
2089
2090
2091
2092
2093
2094
2095
2096
2097
2098
2099
2100
2101
2102
2103
2104
2105
2106
2107
2108
2109
2110
2111
2112
2113
2114
2115
2116
2117
2118
2119
2120
2121
2122
2123
2124
2125
2126
2127
2128
2129
2130
2131
2132
2133
2134
2135
2136
2137
2138
2139
2140
2141
2142
2143
2144
2145
2146
2147
2148
2149
2150
2151
2152
2153
2154
2155
2156
2157
2158
2159
2160
2161
2162
2163
2164
2165
2166
2167
2168

1 A P P E A R A N C E S:

2 MCHUGH FULLER LAW GROUP

BY: MICHAEL J. FULLER, ESQUIRE

3 mike@mchughfuller.com

ALLAN "AJ" ELKINS, JR., ESQUIRE

4 aj@mchughfuller.com

AMY QUEZON, ESQUIRE

5 amy@mchughfuller.com

97 Elias Whiddon Road

6 Hattiesburg, Mississippi 39402

(601) 261-2220

7 Counsel for MDL Plaintiffs

8

9 KELLER ROHRBACK LLP

BY: GARY A. GOTTO, ESQUIRE

10 ggotto@kellerrohrback.com

3101 North Central Avenue

11 Suite 1400

Phoenix, Arizona 85012

12 (602) 248-0088

Counsel for MDL Plaintiffs

13

14 BRANSTETTER STRANCH & JENNINGS PLLC

BY: TRICIA HERZFELD, ESQUIRE

15 triciah@bsjfirm.com@bsjfirm.com

223 Rosa L. Parks Boulevard

16 Suite 200

Nashville, Tennessee 37203

17 (615) 254-8801

Counsel for Tennessee Plaintiffs

18

19 REED SMITH LLP

BY: ABIGAIL M. PIERCE, ESQUIRE

20 abigail.pierce@reedsmith.com

1717 Arch Street

21 Suite 3100

Philadelphia, Pennsylvania 19103

22 (215) 851-8100

Counsel for AmerisourceBergen Drug

23 Corporation

24

25

1 A P P E A R A N C E S:

2 WILLIAMS & CONNOLLY LLP

3 BY: STEVEN M. PYSER, ESQUIRE

4 spyser@wc.com

5 BRAD MASTERS, ESQUIRE

6 bmasters@wc.com

7 725 Twelfth Street, N.W.

8 Washington, D.C. 20005

9 (202) 434-5000

10 Counsel for Cardinal Health Inc.

11

12 JONES DAY

13 BY: NEAL J. STEPHENS, ESQUIRE

14 nstephens@jonesday.com

15 1755 Embarcadero Road

16 Palo Alto, California 94303

17 (650) 739-3939

18 Counsel for Walmart Corporation

19

20 ROPES & GRAY LLP

21 BY: ANDREW O'CONNOR, ESQUIRE

22 andrew.o'connor@ropesgray.com

23 WILLIAM DAVISON, ESQUIRE

24 william.davison@ropesgray.com

25 Prudential Tower

26 800 Boylston Street

27 Boston, Massachusetts 02199

28 (617) 951-7000

29 Counsel for Mallinckrodt Pharmaceuticals

30

31 COVINGTON & BURLING LLP

32 BY: CHRISTOPHER K. EPPICH, ESQUIRE

33 ceppich@cov.com

34 1999 Avenue of the Stars

35 Los Angeles, California 90067

36 (424) 332-4800

37 Counsel for McKesson Corporation

38

39

40

41

1 A P P E A R A N C E S:

2 COVINGTON & BURLING LLP

BY: MEGHAN MONAGHAN, ESQUIRE

3 mmonaghan@cov.com

One City Center

4 850 Tenth Street, N.W.

Washington, D.C. 20001

5 (202) 662-6000

Counsel for McKesson Corporation

6

7 LOCKE LORD LLP

BY: C. SCOTT JONES, ESQUIRE

8 sjones@lockelord.com

2200 Ross Avenue

9 Suite 2800

Dallas, Texas 75201

10 (214) 740-8000

Counsel for Henry Schein, Inc. and

11 Henry Schein Medical Systems, Inc.

12

13 FOLEY & LARDNER LLP

BY: JAMES W. MATTHEWS, ESQUIRE

14 jmatthews@foley.com

111 Huntington Avenue

15 Boston, Massachusetts 02199

(617) 342-4000

16 Counsel for Anda Inc.

17

18 ARNOLD & PORTER KAYE SCHOLER LLP

BY: DAVID D. FAUVRE, ESQUIRE

19 david.fauvre@arnoldporter.com

601 Massachusetts Avenue, N.W.

20 Washington, D.C. 20001

(202) 942-5000

21 Counsel for Endo Health

Solutions Inc., Endo

22 Pharmaceuticals Inc., Par

Pharmaceutical, Inc. and Par

23 Pharmaceutical Companies, Inc.

24

25

1 A P P E A R A N C E S:

2 KIRKLAND & ELLIS LLP

3 BY: ERICA B. ZOLNER, ESQUIRE

4 erica.zolner@kirkland.com

 KAITLYN L. COVERSTONE, ESQUIRE

 kaitlyn.coverstone@kirkland.com

 300 North LaSalle

5 Chicago, Illinois 60654

 (312) 862-2000

6 Counsel for Allergan Finance LLC

7

8 MORGAN LEWIS & BOCKIUS LLP

9 BY: MAUREEN K. BARBER, ESQUIRE

 maureen.barber@morganlewis.com

 One Oxford Centre

10 Thirty-Second Floor

 Pittsburgh, Pennsylvania 15219

11 (412) 560-3300

 Counsel for Teva Pharmaceuticals

12 USA Inc., Cephalon Inc., Watson

 Laboratories Inc., Actavis LLC, and

13 Actavis Pharma Inc. f/k/a Watson

 Pharma Inc.

14

15 ZUCKERMAN SPAEDER LLP

 BY: GRAEME W. BUSH, ESQUIRE

16 gbush@zuckerman.com

 PAUL B. HYNES, JR., ESQUIRE

17 phynes@zuckerman.com

 (via teleconference)

18 1800 M Street, N.W.

 Suite 1000

19 Washington, D.C. 20036

 (202) 778-1800

20 Counsel for CVS Indiana LLC and

 CVS Rx Services Inc.

21

22

23

24

25

1 A P P E A R A N C E S:

2 DECHERT LLP

3 BY: ERIK W. SNAPP, ESQUIRE

4 erik.snapp@dechert.com

5 35 West Wacker Drive

6 Suite 3400

7 Chicago, Illinois 60601

8 (312) 646-5800

9 Counsel for Purdue Pharma

10 O'MELVENY & MYERS LLP

11 BY: AMY R. LUCAS, ESQUIRE

12 alucas@omm.com

13 1999 Avenue of the Stars

14 8th Floor

15 Los Angeles, California 90067

16 (213) 430-6000

17 Counsel for Janssen Pharmaceuticals Inc.

18 MARCUS & SHAPIRA LLP

19 BY: JOSHUA A. KORBIN, ESQUIRE

20 korbin@marcus-shapira.com

21 One Oxford Centre

22 35th Floor

23 Pittsburgh, Pennsylvania 15219

24 (412) 471-3490

25 Counsel for HBC Services

26 BARTLIT BECK HERMAN PALENCHAR &

27 SCOTT LLP

28 BY: KATHERINE M. SWIFT, ESQUIRE

29 katherine.swift@bartlit-beck.com

30 54 West Hubbard Street

31 Suite 300

32 Chicago, Illinois 60654

33 (312) 494-4400

34 Counsel for Walgreens Company

35

36

37

38

39

1 A P P E A R A N C E S:

2 BARNES & THORNBURG LLP
3 BY: WILLIAM LEEDER, ESQUIRE
4 bill.leeder@btlaw.com
5 171 Monroe Avenue, N.W.
6 Suite 1000
7 Grand Rapids, Michigan 49503
8 (616) 742-3930
9 Counsel for H.D. Smith

10 CAVITCH FAMULO & DURKIN CO. L.P.A.
11 BY: ERIC J. WEISS, ESQUIRE
12 eweiss@cavitch.com
13 (via teleconference)
14 1300 East 9th Street
15 Cleveland, Ohio 44114
16 (216) 621-7860
17 Counsel for Discount Drug Mart

18 FOX ROTHSCHILD LLP
19 BY: STEPHAN A. CORNELL, ESQUIRE
20 scornell@foxrothschild.com
21 (via teleconference)
22 2700 Kelly Road
23 Suite 300
24 Warrington, Pennsylvania 18976
25 (215) 345-7500
26 Counsel for Prescription Supply Inc.

27 MORGAN LEWIS & BOCKIUS LLP
28 BY: CAROLYN A. SILANE, ESQUIRE
29 carolyn.silane@morganlewis.com
30 (via teleconference)
31 101 Park Avenue
32 New York, New York 10178
33 (212) 309-6000
34 Counsel for Rite Aid

35 VIDEOGRAPHER:

36 David Lane,
37 Golkow Litigation Services

1	INDEX	
2		
3	APPEARANCES	412
4		
5	PROCEEDINGS	421
6		
7	EXAMINATION OF JAMES E. RAFALSKI:	
8	BY MS. SWIFT	421
9	BY MR. BUSH	562
10	BY MR. O'CONNOR	630
11	BY MS. LUCAS	703
12	BY MS. ZOLNER	740
13	BY MR. SNAPP	776
14	BY MR. FAUVRE	794
15	BY MS. BARBER	810
16	BY MR. FULLER	829
17	BY MR. MATTHEWS	838
18	CERTIFICATE	842
19	ERRATA	845
20	ACKNOWLEDGMENT OF DEPONENT	846
21	LAWYER'S NOTES	847
22		
23		
24		
25		

1 PROCEEDINGS

2 (May 14, 2019 at 8:25 a.m.)

3 THE VIDEOGRAPHER: We're now on
4 the record. My name is David Lane,
5 videographer for Golkow Litigation
6 Services. Today's date is May 14th,
7 2019. Our time is 8:25 a.m.

8 This deposition is taking place
9 in Detroit, Michigan in the matter of
10 National Prescription Opiate
11 Litigation. Our deponent today is
12 James E. Rafalski. Counsel will be
13 noted on the stenographic record.

14 Our court reporter today is
15 Mike Miller.

16 Mr. Rafalski, I just want to
17 remind you, you're still under oath
18 from yesterday.

19 THE WITNESS: Yes, sir, I
20 understand. Thank you.

21 EXAMINATION

22 BY MS. SWIFT:

23 Q. Good morning, Mr. Rafalski.

24 A. Good morning.

25 Q. We met a moment ago. My name

1 what they distribute, but that doesn't mean
2 exclusively, just...

3 Q. Fair enough.

4 So in that situation that you
5 described was the predominant situation, when
6 a manufacturer is selling to a distributor,
7 the distributor places an order with the
8 manufacturer in those circumstances, right?

9 A. Yes, sir.

10 Q. Okay. And the manufacturer
11 ships product to the distributor?

12 A. That's correct.

13 Q. Now, in your report you
14 describe five suspicious order methodologies,
15 correct?

16 A. I do.

17 Q. But your report does not apply
18 any of those five methodologies to orders
19 submitted by distributors to manufacturers,
20 correct?

21 A. That's correct.

22 Q. And so your report doesn't
23 identify any orders received by a
24 manufacturer that were suspicious, correct?

25 A. I don't think that it says

1 that. It's just that I wasn't tasked to
2 provide that methodology in regards to
3 manufacturers at this time.

4 Q. I understand. But your report
5 doesn't identify any suspicious orders that
6 were submitted by distributors to
7 manufacturers.

8 A. My report would only identify
9 those orders that the manufacturers have
10 identified. I don't make any independent
11 calculations or apply any algorithms to
12 identify it outside of what's in my report
13 stated as I've discovered as part of this
14 discovery.

15 Q. Okay. So other than the
16 reports that the manufacturers themselves
17 reported to DEA, you have not identified any
18 suspicious orders submitted by distributors
19 to manufacturers, correct?

20 A. Can I ask a clarification? Are
21 you talking about an individual order or are
22 you talking about conduct?

23 Q. I'm talking about individual
24 orders.

25 A. I have not done that as we sit

1 here today, no, sir.

2 Q. Okay. So your report does not
3 identify any shipments by manufacturers to
4 distributors that you claim should have been
5 reported as suspicious?

6 A. My opinion goes to whether or
7 not there were effective -- or suspicious
8 orders, effective suspicious order systems in
9 place and/or the maintenance of effective
10 controls, the due diligence. I do not do any
11 calculations that would identify any specific
12 orders.

13 Q. Okay. So just to be clear, in
14 response to my question, your report does not
15 identify any shipments by manufacturers to
16 distributors that you claim should have been
17 reported as suspicious, correct?

18 A. I think there's some instances
19 in my report, there was -- there may be a
20 description of a relationship or some
21 transactions between a -- let me think a
22 second.

23 Q. Uh-huh.

24 A. Because I have all of the
25 different companies.

1 (Document review.)

2 A. I don't believe so, no, sir.

3 BY MR. O'CONNOR:

4 Q. Okay. And at trial, do you
5 intend to offer any opinion regarding whether
6 any particular order submitted to a
7 manufacturer was suspicious?

8 A. If I'm requested to do that
9 analysis by counsel, I guess that would be a
10 possibility. I haven't done the analysis as
11 today, so I couldn't offer that opinion.

12 Q. So as you sit here today, you
13 do not have an opinion on whether any
14 particular order that was shipped by a
15 manufacturer was suspicious?

16 A. I think I have an opinion.

17 Q. But you haven't identified any
18 order, correct?

19 A. I have not identified a
20 specific order, but I have an opinion on the
21 conduct.

22 Q. And are you offering any
23 opinion in this litigation that any
24 particular order that was shipped into Summit
25 or Cuyahoga Counties was suspicious?

1 Q. What are we doing here? Are
2 you saying that you're doing something
3 here -- you reviewed SOPs for this report,
4 correct?

5 A. Yeah, but not in the capacity
6 as a diversion investigator.

7 Q. Are you saying that you're
8 doing something in this report that you would
9 not have done as a diversion investigator?

10 MR. FULLER: Object to form.

11 That wasn't the question you asked.

12 A. No, I think you're asking me to
13 comment on my actions that I would conduct at
14 a registrant's location as a diversion
15 investigator, and I'm not sure that that
16 conduct would be readily available, unless I
17 misunderstood your question.

18 BY MS. LUCAS:

19 Q. I'm not -- I just want a yes or
20 no, whether it's common for DEA investigators
21 to ask for SOPs during a regulatory
22 investigation.

23 A. I don't -- I don't know.

24 Q. In your experience.

25 A. I don't know what's common for

1 all diversion investigators, so I don't know.

2 Q. Fair. In your experience?

3 A. Yes.

4 Q. Now, during these regulatory
5 investigations, if the DEA in your experience
6 had concerns about a manufacturer's
7 suspicious order monitoring program that they
8 observed during the inspection, the DEA would
9 raise those concerns with the registrant,
10 right?

11 MR. FULLER: Object to form.

12 Again, it goes to DEA's policy
13 on investigations and their position
14 and what they raise and what they
15 don't raise, so I would say that's
16 outside of your Touhy authorization,
17 Mr. Rafalski.

18 THE WITNESS: I'd agree with
19 that. I'm not going to answer based
20 on the Touhy letter.

21 BY MS. LUCAS:

22 Q. You can't tell me whether in
23 your experience if there were concerns about
24 a suspicious order monitoring program that
25 you observed during a regulatory

1 A. Yes, or the nonabuse rates.

2 Q. The geographic location or
3 where they're being sold?

4 A. Yes.

5 Q. The sales volume in that
6 geography?

7 A. That could be another factor,
8 yes, ma'am.

9 Q. All right. I'm going to ask
10 you some quick yes or nos and then I need to
11 pass the witness while reserving my rights
12 since I have many, many more questions for
13 you.

14 Do you know how many customers
15 Janssen had during the time it sold
16 Duragesic?

17 A. No, I do not.

18 Q. Do you know how many customers
19 Janssen had during the time it sold Nucynta?

20 A. I have not evaluated that
21 information as far as the ARCOS, so, no, I do
22 not at this time.

23 Q. Do you know how many orders per
24 month Janssen received from its customers for
25 Duragesic?

1 A. No, I do not at this time.

2 Q. Do you know how many orders per
3 month Janssen received from its customers for
4 Nucynta?

5 A. No, I do not, not at this time.

6 Q. Do you know Janssen's market
7 share for its opioid medications sold in the
8 Track 1 jurisdictions?

9 A. No, I do not at this time.

10 Q. Do you know the rates of
11 diversion for Duragesic or Nucynta in the
12 Track 1 jurisdictions?

13 A. I'm not sure there's any
14 analysis or information available to give any
15 concise rate of diversion of any drug.

16 Q. So is that a no?

17 A. I think that's a no.

18 Q. Do you know how many shipments
19 of Duragesic Janssen flagged through its
20 algorithm and investigated as potentially
21 suspicious?

22 A. Janssen's never reported a
23 suspicious order to the DEA.

24 Q. My question was different.

25 A. Oh, I'm sorry. Misunderstood

1 it then.

2 Q. Do you know how many shipments
3 of Duragesic Janssen's algorithm flagged and
4 Janssen subsequently investigated before
5 releasing?

6 A. I do not.

7 Q. Do you know how many shipments
8 of Nucynta Janssen flagged as potentially
9 suspicious and investigated before releasing?

10 A. I didn't do that type of
11 analysis up to today on that, on the data in
12 regards to those products and that
13 registrant.

14 Q. Yes or no, did you know that
15 Janssen has reported a physician to the DEA
16 based on a sales representative's tip?

17 A. I have not reviewed a document
18 that had indicated that to me, no, ma'am.

19 Q. Do you know of any instance in
20 the Track 1 jurisdictions of Duragesic being
21 diverted?

22 A. At this time, no, ma'am.

23 Q. Do you know of any instance in
24 the Track 1 jurisdictions of Nucynta being
25 diverted?

1 A. At this time, no, ma'am.

2 Q. Do you know how many
3 inspection -- or strike that.

4 Do you know how many regulatory
5 investigations Janssen -- strike that again.

6 Do you know how many DEA
7 regulatory investigations of Janssen
8 distribution centers were conducted during
9 the relevant time period in this case?

10 A. I do not because that
11 information would not be available to me.

12 Q. Are you aware, yes or no, that
13 the DEA conducted multiple regulatory
14 investigations of Janssen using at least 14
15 different DEA diversion investigators since
16 2008?

17 A. Were those regulatory
18 investigations that -- I'm sorry, with your
19 question --

20 Q. Were you aware of --

21 A. Could you answer --

22 Q. Well, let me --

23 A. Could you restate that for me?
24 Just whether it was inspections or regulatory
25 investigations, I just need clarification.

CERTIFICATE

I, MICHAEL E. MILLER, Fellow of the Academy of Professional Reporters, Registered Diplomate Reporter, Certified Realtime Reporter, Certified Court Reporter and Notary Public, do hereby certify that prior to the commencement of the examination, JAMES E. RAFALSKI was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a verbatim transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that pursuant to FRCP Rule 30, signature of the witness was not requested by the witness or other party before the conclusion of the deposition.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



MICHAEL E. MILLER, FAPR, RDR, CRR
Fellow of the Academy of Professional Reporters
NCRA Registered Diplomate Reporter
NCRA Certified Realtime Reporter
Certified Court Reporter

Notary Public

My Commission Expires: 7/9/2020

Dated: May 15, 2019